

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL MILLER,

Case No.

Plaintiff,

HON.

vs.

LUMBER LIQUIDATORS, INC.,

Defendant.

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NOTICE OF REMOVAL

Defendant, LUMBER LIQUIDATORS, INC. (“Defendant”), by and through its counsel, KEVIN J. PLAGENS and KOPKA PINKUS DOLIN PC, remove this action from the Wayne County Circuit Court to the United States District Court for

the Eastern District of Michigan, Southern Division. In support of this Notice of Removal, Defendant states as follows:

PROCEDURAL BACKGROUND AND GROUNDS FOR REMOVAL

1. On or about, March 8, 2022, Plaintiff DANIEL MILLER (“Plaintiff”) commenced this action by filing a Complaint in the Wayne County Circuit Court and causing a Summons to be issued. *See Ex. A*, Summons and Complaint.

2. On March 18, 2022, Plaintiff’s Complaint was served upon Defendant Lumber Liquidators by way of its resident agent, CSC Lawyer Inc. *See Ex. B*, Proof of Service.

3. On March 25, 2022, counsel filed an Appearance and on April 6, 2022, counsel filed an Answer to Plaintiff’s Complaint, Ordinary Defenses and Affirmative Defenses and a Jury Demand on behalf of Defendant. *See Ex. C*, Defendant’s Pleadings.

4. No other pleadings, orders, or documents were filed in this case.

5. Pursuant to **28 U.S.C. § 1446(b)(3)**, this Notice of Removal is filed within thirty (30) days of receipt of Plaintiff’s counsel’s written statement that Plaintiff seeks damages in excess of \$75,000.00 which first allowed Defendant to ascertain that the case is one which is removable. This information was provided by Plaintiff’s counsel via email on April 6, 2022. *See Ex. D*, Email. Therefore, this Notice is timely filed pursuant to **28 U.S.C. § 1446(b)**.

6. This Court is in the district and division “embracing the place where [the State Court] action is pending.” **28 U.S.C. § 1441(a)**. The Wayne County Circuit Court is located in the Eastern District of Michigan.

DIVERSITY JURISDICTION

7. This case is a civil action of which this Court has original diversity jurisdiction pursuant to **28 U.S.C. §1332(a)** because the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, costs, and attorneys’ fees, and this action is between citizens of different states, as demonstrated more fully below:

a. **Plaintiff Daniel Miller Is A Citizen of Michigan:** A person is a citizen of the state in which he or she is domiciled. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989). “[D]omicile is established by physical presence in a place in connection with a certain state of mind concerning one’s intent to remain there.” *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989). On April 5, 2022 Defendant confirmed with Plaintiff’s counsel, R. THOMAS BIDARI, that Plaintiff is domiciled in, and citizen of, the State of Michigan. Moreover, that Plaintiff intends to remain in the State of Michigan indefinitely. In his Complaint, Plaintiff alleges that he is a resident of the State of Michigan. Ex. A. Plaintiff has not alleged an intent to move or leave this domicile. Ex.

A. Therefore, for diversity purposes, Plaintiff is domiciled in and citizen of the State of Michigan.

b. **Defendant Lumber Liquidators a/k/a LL Flooring is Incorporated in the State of Delaware:** Defendant Lumber Liquidators is a corporation incorporated under the laws of the State of Delaware and has its principal place of business and headquarters at 4901 Bakers Mill Lane, Richmond Virginia. “For purposes of determining diversity jurisdiction, a corporation can be a citizen of two states: (1) its state of incorporation; and (2) the state of its principal place of business.” *Freeman v. Unisys Corp.*, 870 F. Supp. 169, 172 (E.D. Mich. 1994) (citing **28 U.S.C. § 1332(c)**). Accordingly, Defendant Lumber Liquidators is a citizen of the States of Delaware and Virginia and is not now and never has been a citizen of the State of Michigan within the meaning of **28 U.S.C. § 1332(c)**.

8. Therefore, complete diversity exists because Plaintiff is a citizen of Michigan and Defendant Lumbar Liquidators is incorporated in the State of Delaware a citizen of the State of Virginia,

9. Pursuant to **L.R. 81.1(a) and (b)** and **28 U.S.C. § 1332(a)**, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, costs, and attorney fees. Plaintiff’s counsel has explicitly stated that Plaintiff is seeking damages that exceed \$75,000.00 due to his alleged injuries. Ex. D. Although

Defendant denies the allegations in Plaintiff's Complaint and denies any liability to Plaintiff whatsoever, if those allegations are proven to be true, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, costs and attorney's fees.

10. A Notice of Filing Notice of Removal and a copy of this Notice of Removal to Federal Court will be filed with the Wayne County Circuit Court as required by **28 U.S.C. § 1446(d)** and copies of the same will be served upon Plaintiff.

11. Based upon the foregoing, Defendant is entitled to remove this action to this Court under **28 U.S.C. § 1331**, et. seq.

12. In filing this Notice of Removal, Defendant does not waive any defenses that may be available to it, including but not limited to, those under **Fed. R. Civ. P 12(b)**.

13. This Notice of Removal is filed in compliance with **Fed. R. Civ. P. 11** and Local Rules of the United States District Court for the Eastern District of Michigan.

WHEREFORE, Defendant respectfully request that this Court take jurisdiction over this matter and grant such other relief as the Court deems proper.

[signature page follows]

Respectfully Submitted,

KOPKA PINKUS DOLIN PC

/s/ Kevin J. Plagens

By: _____
KEVIN J. PLAGENS (P55992)
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Dated: April 18, 2022

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

I, Kimberly Ramsay, am an employee of KOPKA PINKUS DOLIN PC, and I certify that I e-filed the foregoing document on April 18, 2022, using the ***ECF e-filing system*** which will send a copy of this document together with notification to all counsel of record; and that I mailed and emailed a copy of this document to any non-e-filing participants.

/s/ Kimberly Ramsay

Kimberly Ramsay